

The Honorable John C. Coughenour

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

DISCOVERY PARK COMMUNITY
ALLIANCE, *et al.*,

Petitioners,

vs.

CITY OF SEATTLE,

Respondent.

No. 2:19-cv-1105-JCC

CITY OF SEATTLE'S **REPLY**
REGARDING ITS MOTION TO JOIN
THE U.S. ARMY AND SEATTLE
PUBLIC SCHOOLS AS
RESPONDENTS

NOTE ON MOTION CALENDAR:
Friday October 18, 2019

I. INTRODUCTION

Because Petitioners do not object to the joinder of the U.S. Army as a necessary party under the Land Use Petition Act ("LUPA"), this Court should grant the City's motion as to the Army. *See* Dkt. # 20 at p. 1:21-22 (Response).

Seattle Public Schools ("SPS") is a necessary party under Fed. R. Civ. P. 19(a) because: the Petition levels claims specifically at SPS, which should be allowed to defend its interests directly without having to rely on the City; and this Court cannot accord complete relief without SPS. Because Petitioners' claims to the contrary lack merit, this Court should grant the City's motion as to SPS.

II. ARGUMENT

A. The Petition's SPS-specific claims demonstrate SPS is a necessary party under Fed. R. Civ. P. 19(a).

The City has demonstrated SPS is a necessary party under Fed. R. Civ. P. 19(a). The Petition levels claims specifically at SPS. For example, the Petition asserts SPS: is disqualified from seeking Ft. Lawton property (Dkt. # 1-2 at p. 13:9-12); intends to build a school on the Ft. Lawton property and is using the prospect of joint-use playfields to avoid required environmental review (*id.* at 9:17-20, 14:4-15); and impermissibly took final project action and proceeded with the City before completing other review. *Id.* at 14:16 – 15:2. It is not enough for Petitioners now to say they “are not challenging any action or involvement by the Seattle Public Schools,” Dkt. # 20 at p. 5:23 (Response), or the “Petitioners’ action does not wish to impact the Seattle Public Schools.” *Id.* at 5:17-18. The Petition proves otherwise.

SPS has an interest in defending its ability to seek surplus Ft. Lawton property. That interest is memorialized in SPS’s 2017 agreement with the City, *see* Dkt. # 17-1, and the prospective SPS-City agreement the City Council authorized and Petitioners challenge. *See* Dkt. # 1-2 at pp. 37-41 (Ord. 125841 without attachment); Dkt. # 17-2 (attachment to Ord. 125841). Just like all parties affected by a contract are necessary to an action seeking to set it aside, SPS is a necessary party to Petitioners’ action to undercut one SPS-City agreement and prevent another. *See Lomayaktewa v. Hathaway*, 520 F.2d 1324, 1325 (9th Cir. 1975) (“No procedural principle is more deeply imbedded in the common law than that, in an action to set aside a lease or a contract, all parties who may be affected by the determination of the action are indispensable.”).

B. SPS had no reason to participate in the administrative proceeding below.

SPS’s absence from the administrative proceedings below is irrelevant. *Cf.* Dkt. # 20 at pp. 2:6-7, 3:13, 4:3, and 4:7-8 (Response). In their appeal of the Ft. Lawton project

1 environmental impact statement (“EIS”) before the City of Seattle Hearing Examiner, Petitioners
 2 claimed the EIS was inadequate for several reasons, including how it addressed playfield
 3 improvements contemplated by SPS for the Ft. Lawton site. Declaration of Patrick Downs in
 4 Support of the City of Seattle’s Motion to Join the U.S. Army and Seattle Public Schools as
 5 Respondents, Exhibit 1 (Notice of Appeal) at 8:23 – 9:2. SPS did not need to participate—at
 6 issue was the City’s EIS, which the City had the incentive and responsibility to defend. *Id.*,
 7 Exhibit 2 (Findings and Decision of the Hearing Examiner). Petitioners did not raise before the
 8 Examiner the SPS-specific claims they later included in their Petition.

9 **C. The case law Petitioners’ invoke is unavailing.**

10 The fact-bound decisions Petitioners invoke are distinguishable. *See* Dkt. # 20 at pp. 4-5
 11 (Response). *Cathcart-Maltby* does not support Petitioners’ claim that this “is not the place or
 12 time for [SPS] to become involved.” Resp at 5:3-6 (citing *Cathcart-Maltby-Clearview*
 13 *Community Council v. Snohomish Cnty*, 96 Wn.2d 201, 201-206, 634 P.2d 853 (1981)).
 14 Resolving a pre-LUPA land use dispute, *Cathcart-Maltby* ruled that mortgagees and
 15 beneficiaries to deeds of trust were not indispensable parties because their interests were
 16 represented by the named owners and developers. *Id.*, 96 Wn.2d at 206-07. *See* 1995 Wash.
 17 Laws, ch. 347, §§ 701 *et seq.* (enacting LUPA). SPS has a documented interest in obtaining
 18 Ft. Lawton property—an interest Petitioners assail and the City, an arms-length partner with
 19 SPS, will not necessarily defend.

20 *Ohio Valley Environmental* is distinguishable for the same reason—it ruled a District
 21 Court did not abuse its discretion when finding a missing party was unnecessary because its
 22 interests were identical to the named parties’ interests. *Ohio Valley Environmental Coalition v.*
 23

1 *Bulen*, 429 F.3d 493, 504-05 (4th Cir. 2005). The City's and SPS's interests may be aligned, but
 2 they differ.

3 *NAACP* noted "that in suits to compel federal agencies to obey the law the countless
 4 people or entities who would be effected thereby do not become necessary parties." *NAACP v.*
 5 *Donovan*, 558 F. Supp. 218, 223 (D.D.C. 1982). SPS is necessary because of Petitioners' SPS-
 6 specific claims.

7 *Salt Lake Tribune* determined a party not subject to a contested agreement was
 8 unnecessary when complete relief could be accorded among the actual parties and where the
 9 court could fashion relief that would protect the absent parties' interests. *Salt Lake Tribune*
 10 *Publishing Co. v. AT&T Corp.*, 320 F.3d 1081, 1096-98 (10th Cir. 2001). That is untrue here,
 11 where SPS, as an outside party, would not be bound by this Court's resolution of Petitioners'
 12 SPS-specific claims.

13 Petitioners also misread *Hall*, which, contrary to Petitioners' suggestion, did not rule a
 14 party who has not attempted to intervene under Rule 24 is *per se* unnecessary under Rule 19. *See*
 15 Dkt. # 20 at p. 4:7-9 (Response citing *Hall v. National Service Industries, Inc.*, 172 F.R.D 157,
 16 159 (E.D. Pa. 1997)).

17 **D. LUPA does not render SPS unnecessary.**

18 Petitioners' claims that SPS is unnecessary under LUPA miss the mark.¹ The City does
 19 not claim SPS is necessary under LUPA; only under Rule 19.

20 Nothing in LUPA renders SPS unnecessary. Although the first sentence of
 21 RCW 36.70C.050 says a property owner (the Army in this case) is a necessary party, the rest of
 22

23 ¹ The City reserves the right to argue LUPA is an improper vehicle for pursuing the relief Petitioners seek.

1 that section discusses the prospect of joining other parties needed for just adjudication.
2 RCW 36.70C.050 (discussing joinder of other parties that “may be needed for just adjudication
3 of the petition”). The Civil Rules govern procedural matters to the extent not inconsistent with
4 LUPA. RCW 36.70C.030(2). Rule 19 is consistent with LUPA.

5 In any event, the Petition alleges causes of action beyond LUPA, so LUPA does not
6 dictate the scope of necessary parties. *See* Dkt. # 1-2 at pp. 22:13 - 23:19 (Petition raising causes
7 of action for a writ and under the Declaratory Judgments Act).

8 III. CONCLUSION

9 The parties agree the Army should be joined as a respondent. This Court should also
10 order Petitioners to join SPS so it may defend directly against the Petition’s SPS-specific claims.
11 The City respectfully asks the Court to order Petitioners to timely file and serve an amended
12 petition naming the Army and SPS as respondents.

13 Dated October 18, 2019.

14 PETER S. HOLMES
Seattle City Attorney

15 By: s/Patrick Downs, WSBA # 25276
16 s/Roger D. Wynne, WSBA #23399
Assistant City Attorneys
17 Seattle City Attorney’s Office
701 Fifth Avenue, Suite 2050
18 Seattle, WA 98104-7097
Ph: (206) 684-8200
19 Fax: (206) 684-8284
E-mail: patrick.downs@seattle.gov
20 roger.wynne@seattle.gov
Attorneys for Respondent City of Seattle

CERTIFICATE OF SERVICE

I certify that on this day I electronically filed this document and Declaration of Patrick Downs in Support of the City of Seattle's Motion to Join the U.S. Army and Seattle Public Schools as Respondents with the Clerk of the Court using the CM/ECF system which will send notification of such filing to:

Allen T. Miller, WSBA # 12936
Law Offices of Allen T. Miller, PLLC
1801 West Bay Drive NW
Olympia, WA 98502
Phone: 360-754-9156
Email: allen@atmlawoffice.com
Attorney for Petitioners

I also certify that on this day I sent a copy of this document via e-mail to the same individual and to mmoc@atmlawoffice.com, lisa@atmlawoffice.com, and andrea@atmlawoffice.com.

Dated this October 18, 2019, at Seattle, Washington.

s/Alicia Reise
ALICIA REISE, Legal Assistant